

APPEAL NO. 021253  
FILED JULY 1, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 23, 2002. The hearing officer determined that (1) the respondent (claimant) sustained a compensable injury to his arm and low back on \_\_\_\_\_; (2) the appellant carrier is not relieved from liability for the injury of \_\_\_\_\_, under Section 409.002, because of the claimant's failure to notify his employer pursuant to Section 409.001 because the employer had actual knowledge of the claimant's scraped arm; and (3) the claimant did not have disability resulting from the compensable injury. The (carrier) appeals the injury and notice determinations on sufficiency of the evidence grounds. The carrier also asserts that the hearing officer misapplied the law with regard to notice. The claimant urges affirmance. The hearing officer's disability determination was not appealed and is, therefore, final. Section 410.169.

DECISION

Affirmed.

INJURY

The hearing officer did not err in determining that the claimant sustained a compensable injury to his arm and low back on \_\_\_\_\_. This was a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). In view of the evidence presented, we cannot conclude that the hearing officer's injury determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

NOTICE

The hearing officer did not err in determining that the carrier is not relieved from liability for the injury of \_\_\_\_\_, under Section 409.002, because the employer had actual knowledge of the claimant's scraped arm. It is undisputed that the claimant suffered a slip and fall while in the course and scope of his employment on \_\_\_\_\_. The claimant testified that the incident was witnessed by several coworkers, including his direct supervisor. In a written statement, the claimant's supervisor indicated that he witnessed the incident and stated that the claimant "skinned his arm." Notwithstanding, the carrier asserts, essentially, that the employer did not have notice of an injury, particularly with regard to the claimant's low back.

Under Section 409.002, failure to notify an employer of an injury as required by Section 409.001(a) relieves the employer and the employer's insurance carrier of liability for the injury, unless the employer, a person eligible to receive notice under Section 409.001(b), or the employer's insurance carrier has actual knowledge of the employer's injury. In DeAnda v. Home Insurance Co., 618 S.W.2d 529, 533 (Tex. 1980), the Supreme Court of Texas held that actual knowledge of an injury "need not apprise the employer of the exact time, place and extent of the injury," but "the employer need only know the general nature of the injury and the fact that it is job related." We have continued to follow this principle in our application of the notice provisions of the 1989 Act. See Texas Workers' Compensation Commission Appeal No. 971706, decided October 16, 1997. In view of our prior decisions and the evidence presented, the hearing officer could determine, as he did, that the employer had sufficient notice of the injury. The hearing officer's determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*.

The decision and order of the hearing officer are affirmed.

The true corporate name of the carrier is **SECURITY NATIONAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**DONALD GENE SOUTHWELL  
10000 N. CENTRAL EXPRESSWAY  
DALLAS, TEXAS 75265.**

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Philip F. O'Neill  
Appeals Judge

CONCUR:

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Susan M. Kelley  
Appeals Judge

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Michael B. McShane  
Appeals Judge